

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1109 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

DEVYATBHAI BHAGWAN AHIR

Versus

STATE OF GUJARAT

Appearance:

MR YOGESH S LAKHANI for Petitioner

Ms.Siddhi Talati, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 22/12/98

ORAL JUDGEMENT

1. In this writ petition under Article 226 of the Constitution of India the prayer is for quashing the show cause notice (Annexure : A) dated 20.11.1997 under Section 59 of the Bombay Police Act, Externment Order dated 16.6.1998 (Annexure : B) and the order of the Appellate Authority (Annexure : C) dated 16.7.1998.

2. Number of contentions were raised by the learned Counsel for the petitioner in assailing the show cause notice and the orders of the Externing Authority as well as the Appellate Authority. It is not necessary to deal with all the contentions. One fact emerges from the record that the petitioner examined four witnesses in defence. The certified copy of the statement of defence witnesses was shown to me in the course of argument. There is no mention in the order of the Externing Authority that he had considered the aforesaid statements. On the other hand the opening sentence of the telegraphic order of the Externing Authority shows that the opponent has failed to defend against the allegations in connection with the show cause notice. This itself shows that the record was not examined by the Externing Authority and the order was passed for externment of the petitioner from four districts in a mechanical manner. The Appellate Authority also confirmed the order of externment in a mechanical manner. There is mention in the order of the Appellate Authority that witnesses were examined, but it is not mentioned how many witnesses were examined and on what grounds those statements of defence witnesses could be rejected. There is casual and mechanical observation that the defence witnesses have given statements due to good relations with the petitioner. This could not be reason for rejecting the statements of defence witnesses. It is, therefore manifest that the orders of the externing Authority as well as the Appellate Authority suffers from the vice of non-application of mind. The two orders, therefore, have to be quashed. However, interest of justice requires that the matter be remanded to the Externing Authority who shall consider the entire material on record and also the arguments advanced by the two sides and shall thereafter pass speaking order in accordance with law. If the appeal is preferred the Appellate Authority shall also deal with the appeal objectively. Till the orders are passed by the Externing Authority, the externment order already passed against the petitioner shall remain in abeyance.

3. The petition is disposed of with the above direction.

sd/-

(D. C. Srivastava, J.)

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